

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

July 14, 2000

John E. Harmelink, Esq.
Counsel for Debtor
Post Office Box 18
Yankton, South Dakota 57078


Subject: *In re Kirwan Ranch (a South Dakota partnership);*
Chapter 7; Bankr. No. 97-30004

Dear Mr. Harmelink:

After reviewing the file for this case and, in part, based on the evidence received during the trial in Adversary No. 99-3001, it appears that you were not eligible to serve as Debtor's Chapter 12 counsel. You had an actual conflict of interest because you were representing Debtor's individual partners, against whom Debtor had pre-petition claims. Also, you were paid in this case, at least in part, by funds from Gerald Kirwan, against whom Debtor also had a pre-petition claim.

Debtor's schedules, statement of financial affairs, and application to employ you and your disclosure of compensation and affidavit of a professional to be employed all did not adequately set forth the pre-petition work you performed for Debtor and its individual partners. These pleadings also did not disclose the pre-petition claims that Debtor held against its partners and Gerald and Leona Kirwan and they did not adequately describe the fee arrangement you had with Debtor, its partners, and Gerald Kirwan. See 11 U.S.C. §§ 327 and 329(a) and FED.RS.BANKR.P. 2014(a) and 2016(b). Some information in these pleadings also conflicted. Your disclosure of compensation said your pre-petition fees were paid by Debtor; Debtor's statement of financial affairs said Gerald Kirwan paid the pre-petition fees.

Had the Court known about the pre-petition claims that Debtor held against its individual partners and Gerald Kirwan arising from the pre-petition sale of Debtor's real property and the details regarding the payment of your pre-petition fees, your employment as Debtor's counsel would have been denied under 11 U.S.C. § 327(a). As the record stands now, any fees you have received would be subject to disgorgement under 11 U.S.C. § 329(b).

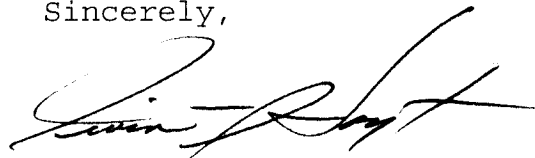


Re: Kirwan Ranch
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Since your Chapter 12 fees in this case were apparently paid by Gerald Kirwan, I will not set a hearing under § 329(b). Instead, please consider this letter your "warning shot across the bow." If there is an inadequate disclosure of a potential conflict of interest or if the details of a fee arrangement are not set forth in a future case, your employment as the debtor's counsel may be denied or your fees may be disgorged.

For more in-depth discussions of the disclosure requirements set forth in the Code and Federal Rules, please review *In re Swenson*, Bankr. No. 99-10195, slip op. (Bankr. D.S.D. May 4, 2000; *In re Outka*, Bankr. No. 97-50491, slip op. (Bankr. D.S.D. April 13, 2000); *In re Brandenburger*, 145 B.R. 624 (Bankr. D.S.D. 1992); *In re Black Hills Greyhound Racing Assoc.*, 154 B.R. 285 (Bankr. D.S.D. 1993); and *In re Marolf Dakota Farms Cheese, Inc.*, Bankr. No. 89-50045, slip op. (Bankr. D.S.D. Oct. 17, 1990). The slip opinions, as well as the two published decisions, are available on the Court's web site [www.sdb.uscourts.gov].

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; copies to parties in interest)

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUL 14 2000

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

I hereby certify that a copy of this document
was mailed, hand delivered, or faxed this date
to the parties on the attached service list.

JUL 14 2000

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By

Case: 97-30004 Form id: 122 Ntc Date: 07/14/2000 Off: 3 Page : 1

Total notices mailed: 8

Debtor Kirwan Ranch, A South Dakota Partnership, HC 76, Box 32, Bristow, NE 68719

Aty Harmelink, John E. PO Box 18, Yankton, SD 57078

Trustee Lovald, John S. PO Box 66, Pierre, SD 57501

Aty Damgaard, Roger W. PO Box 5027, Sioux Falls, SD 57117

Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321

Aty Goldammer, Vance RC PO Box 5015, Sioux Falls, SD 57117-5015

Aty Johnson, Rick PO Box 149, Gregory, SD 57533

Aty Prendergast, Terry N. PO Box 5015, Sioux Falls, SD 57117-5015